

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
COUNCIL BLUFFS INDUSTRIAL FOUNDATION	NO. 2007-AQ- 29 NO. 2007-SW- 18
Pottawattamic County, Iowa	

TO: Council Bluffs Industrial Foundation
A.W. Tauke, Registered Agent
42 North 2nd Street
Council Bluffs, IA 51503

Council Bluffs Industrial Foundation
Attn: Jerry Jares, President
P.O. Box 1565
Council Bluffs, IA 51502

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Council Bluffs Industrial Foundation (CBIF) for the purpose of resolving asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) and improper disposal of solid waste violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:
Matt Rhodes, Environmental Specialist
DNR Field Office 4
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

Relating to legal requirements:
Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which

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authorizes the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the director to assess administrative penalties, the DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. CBIF is an economic development foundation based in Council Bluffs, Iowa. CBIF owned commercial property located at 1130 West South Omaha Bridge Road in Council Bluffs. The property was the site of a former drive-in movie theater. The theater was demolished by Peterson Contractors, Inc. Waste from this demolition was improperly deposited at property belonging to Frank Sollazzo (Sollazzo site) which is located in Section 14, T75N, R42W, Pottawattamie County and locally known as 20394 Husker Lane, Council Bluffs, Iowa.

2. On April 26, 2007, DNR Field Office 4 received a complaint alleging that petroleum contaminated soil (PCS) was being improperly disposed of at the Sollazzo site. Thad Nanfite of DNR Field Office 4 conducted a preliminary investigation of the site. During the investigation, Mr. Nanfite observed construction and demolition waste and PCS at the site. Mr. Sollazzo stated that he allowed Dennis Collins of D&D Construction (D&D) to haul dirt and trees to the ditch behind his residence and to deposit material on the site. During the investigation, Mr. Sollazzo called Mr. Collins who stated, according to Mr. Sollazzo, that some waste which should have gone to a landfill was mistakenly brought to the Sollazzo site.

3. On May 4, 2007, DNR Field Office 4 personnel received a phone call from Mr. Collins of D&D. Mr. Collins stated that they would remove all of the wood waste from the site and dispose of it at the Anderson Excavating Landfill in Council Bluffs. He further stated that the waste materials at the Sollazzo site had come from the former drive-in theater in Council Bluffs. DNR personnel explained that there were concerns that asbestos containing material was present in the waste at the Sollazzo site. Mr. Collins stated that asbestos testing had been completed as part of the demolition project.

4. On May 23, 2007, Keith Wilken, Field Office 4 and Tom Wuehr, DNR Air Quality conducted a follow-up inspection at the Sollazzo site. During the inspection, samples of suspected asbestos containing material were collected for analysis. Upon receipt of the laboratory results it was confirmed that regulated quantities of asbestos containing material were present in the construction and demolition waste found at the Sollazzo site.

5. On June 8, 2007, DNR Field Office 4 personnel contacted D&D and informed Mr. Collins not to remove any of the waste materials from the site until DNR decided how to proceed. During the call, Mr. Collins informed DNR that CBIF owned the former drive-in theater where the waste had originated and that Peterson Contractors, Inc. (PCI) was responsible for the demolition project.

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6. On June 14, 2007, DNR Field Office 4 personnel contacted D&D. Mr. Collins stated that PCI did the demolition work and D&D only hauled the waste materials to the site. D&D also faxed a letter from Terracon, a consulting and engineering group, regarding the asbestos abatement at the drive-in theater. The letter stated that no further asbestos containing material remained in the drive-in theater structures.

7. On June 15, 2007, DNR Field Office 4 personnel conducted another inspection of the Sollazzo site at the request of PCI. The purpose of the visit was to discuss the abatement and disposal of the waste materials from the site. Mr. Fleshner, PCI Project Manager, stated that he would discuss the issues with Mr. Sollazzo and then develop a plan to remedy the situation.

8. On June 22, 2007, DNR issued a Notice of Violation letter to the four parties involved with the improper disposal of solid waste at the Sollazzo site: Frank Sollazzo, D&D, CBIF, and PCI. The letter required that the parties submit a plan of action (POA) regarding the cleanup and disposal of waste material. On July 6, 2007, PCI submitted a POA to DNR regarding the asbestos abatement and removal of the solid waste items from the Sollazzo site.

9. On or around August 21, 2007, PCI contacted Matt Rhodes at DNR Field Office 4 that the cleanup of the surface material had been completed. PCI stated that approximately 400 tons of debris (all as asbestos containing material) was taken to a landfill in David City, Nebraska.

10. CBIF neither admits nor denies the Statement of Facts and Conclusions of Law and enters into this Administrative Consent Order for settlement purposes only.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides for the Environmental Protection Commission to establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-30 relating to air quality. Pursuant to Iowa Code section 455B.133, 567 IAC. 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the asbestos NESHAP, found at 40 CFR part 61, subpart M.

2. 40 CFR 61.150(b)(1) requires that all asbestos containing waste material be deposited as soon as is practical by the waste generator at a waste disposal site operated in accordance with 40 CFR 61.154 for active waste disposal sites. The asbestos containing waste from the demolition was not disposed of at an acceptable disposal site. As the owner of the property, CBIF is responsible as an owner or operator under the asbestos NESHAP regulations. The above facts indicate noncompliance with this provision.

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3. Iowa Code section 455B.304 provides that the Environmental Protection Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-121.

4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The waste from the drive-in was improperly disposed of at the Sollazzo site. The above facts demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, the DNR orders and CBIF agrees to do the following:

1. CBIF shall comply with all applicable asbestos and solid waste rules in the future and;
2. CBIF shall pay a penalty of \$3,100.00 within 60 days of the date from which the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$3,100.00. The administrative penalty is determined as follows:

Economic Benefit – Due to the high cleanup costs, CBIF received minimal economic benefit from this violation. Based on the above considerations, \$100.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has determined at this time the most equitable and

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efficient means of resolving the matter is through an administrative consent order. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to properly dispose of solid waste and properly abate asbestos contaminated materials threatens the integrity of the regulatory program. Tax dollars were expended to investigate, document, and respond to this violation. Improper solid waste disposal as well as failure to properly abate asbestos contaminated waste can degrade water quality and contribute contaminants to both land and water resources as well as threaten the public health. Based on the above considerations, \$2,000.00 is assessed for this factor.

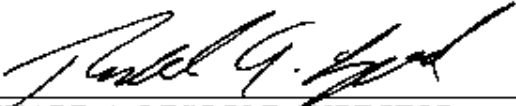
Culpability – CBIF has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Based on the above considerations, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of CBIF. For that reason CBIF waives its rights to appeal this administrative consent order or any part thereof.

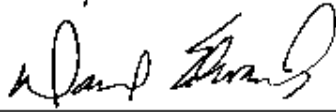
VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this administrative consent order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 18 day of
Dec., 2007.



For Council Bluffs Industrial Foundation

Dated this 28th day of
NOVEMBER, 2007.

Barb Stock (Con 10-6 Pottawattamie County); Kelli Book; Field Office 4; Dan Stipe; V.I.D., VII.C.1, and VII.C.4